

E-Filed 3/18/09

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MICHAEL R. BERUBE,

Plaintiff,

v.

HSBC BANK USA,

Defendant.

Case Number C 09-127 JF (PVT)

ORDER VACATING HEARING SET
FOR MARCH 23, 2009; GRANTING
MOTION TO DISMISS WITH LEAVE
TO AMEND; AND DENYING
MOTIONS TO STRIKE AND FOR
MORE DEFINITE STATEMENT AS
MOOT

[re: document nos. 5, 8, 10]

Before the Court are Defendant's motion to dismiss, motion to strike, and motion for more definite statement. The Court has considered the moving and responding papers. The Court concludes that the motions are appropriate for disposition without oral argument. *See* Civ. L.R. 7-1(b). For the reasons discussed below, the motion to dismiss will be granted with leave to amend and the motions to strike and for more definite statement will be denied as moot.

DISCUSSION

Plaintiff, proceeding *pro se*, commenced this action by filing a complaint in the Monterey County Superior Court on October 27, 2008. Plaintiff alleges four claims arising out of a nonjudicial foreclosure sale that allegedly occurred on April 15, 2008: (1) untitled claim

1 asserting unlawful nonjudicial foreclosure sale; (2) violation of the federal Fair Debt Collection
 2 Practices Act, the California Rosenthal Fair Debt Collection Practices Act, and the Real Estate
 3 Settlement Procedures Act; (3) predatory lending practices; and (4) violation of RICO.
 4 Defendant filed a notice of removal on January 12, 2009, and filed the instant motions a few days
 5 later on January 16, 2009. Plaintiff filed an omnibus opposition brief on February 27, 2009, and
 6 Defendant filed reply briefs on March 6, 2009.

7 On March 16, 2009, the Court issued a Clerk's Notice continuing the hearing date from
 8 March 20, 2009 to March 23, 2009. Also on March 16, 2009, counsel for Defendant contacted
 9 the Court and stated that he was not available to attend the hearing on March 23, and suggested
 10 several alternative hearing dates to which his motions could be continued. Court staff attempted
 11 to contact Plaintiff at the telephone number provided on his opposition brief, but that number
 12 apparently is for a facsimile machine, so Court staff was unable to speak with Plaintiff or leave a
 13 message about his availability for a new hearing date. After reviewing the complaint, the Court
 14 concludes that Defendant's motion to dismiss is well taken. Plaintiff appears to concede that his
 15 claims could be pleaded more clearly. Accordingly, rather than delaying adjudication of the
 16 motion while it makes further attempts to contact Plaintiff, the Court decided to submit the
 17 matter without oral argument and grant the motion to dismiss with leave to amend. In light of
 18 this disposition, the motions to strike and for more definite statement will be denied as moot,
 19 without prejudice to their renewal if appropriate if and when Plaintiff files an amended
 20 complaint.

21 ORDER

- 22 (1) The motion hearing set for March 23, 2009 is VACATED;
- 23 (2) Defendant's motion to dismiss is GRANTED WITH LEAVE TO AMEND; and
- 24 (3) Defendant's motions to strike and for more definite statement are DENIED AS MOOT.

25 DATED: 3/18/09

26 
 27 JEREMY FOGEL
 28 United States District Judge

1 Copies of Order served on:

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